

ADDENDA AND CORRIGENDA

The 4th May, 1977

No. 5555/2-L.—Addenda and corrigenda to the notification under section 4/17 issued,—vide No. 8682/1-L/PT-III/SYL, dated 2nd July, 1976 and declaration under section 6 issued,—vide No. 8682/1-L/PT-III/SYL, dated 2nd July, 1976 and order under section 7,—vide No. 8684/1-L/PT-III/SYL, dated 2nd July, 1976, published in *Haryana Government Gazette*, dated 13th July, 1976. The following field numbers may also be read against villages Dabkheri and Bichganwah, tehsil Thanesar, district Kurukshetra in addition to field numbers already notified.

Serial No.	District	Tehsil	Village	Rectangle No.	Field Nos.
1.	Kurukshetra	Thanesar	Dabkheri	37	8 and Killas Nos. 65, 218, 63
2.	Kurukshetra	Thanesar	Bichganwah	30	25
				54	12
				61	22
					and Killas Nos. 76, 78, 81, 83, 84, 86, 92

(Sd)

Superintending Engineer,
S.Y.L. Circle No. 2, Ambala.

LABOUR DEPARTMENT

The 24th May, 1977

No. 4546-4Lab-77/12636.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947); the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Haryana, Faridabad in respect of the dispute between the workmen and the management of M/s Frick India Ltd., 13/3, Mathura Road, Faridabad.

BEFORE SHRI NATHU RAM SHARMA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL
HARYANA, FARIDABAD

Reference No. 115 of 1974

between

SHRI UJAGAR SINGH WORKMAN AND THE MANAGEMENT OF M/S FRICK INDIA LTD.,
13/3, MATHURA ROAD, FARIDABAD

AWARD

By order No. ID/FD/73/328/31970, dated 6th July, 1973, the Governor of Haryana, referred the following dispute between the management of M/s. Frick India Ltd., 13/3, Mathura Road, Faridabad and its workman Shri Ujagar Singh to this Tribunal, for adjudication, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 :—

Whether the termination of services of Shri Ujagar Singh is justified and in order ? If not, to what relief is he entitled ?

On receipt of the reference notices were issued to the parties. The parties put in their pleadings and the following issues were framed.

(1) Whether it is a case of self abandonment of service by the workman concerned as alleged by the management (on management).

(2) Whether the termination of services of Shri Ujagar Singh is justified and in order? If not, to what relief is he entitled?

The parties led their evidence. The management examined Shri Kalyan Singh, Manager, as M.W. 1 who stated that the workman concerned abruptly absented himself from duty with effect from 5th April, 1973. Show cause notice, copy whereof, Exhibit M-1, was sent to the workman. Copies of letters, Exhibit M-2 and M-3 were also sent to the workman on the address supplied by him. They were received undelivered. The address on these letters is the same as given by the workman in a *pro forma*. He further stated that he had raised this plea even before the Conciliation Officer. This witness however denied that he got the workman concerned beaten by his Security Officer. The Security Officer also appeared as M.W. 2. He stated that he never beaten the workman concerned at the instance of the management and he never saw the workman at the main gate after 4th April, 1973. The workman examined a clerk of the Labour Inspector as W.W. 1 who proved, Exhibit W-1 and W-2 copies of the complaints of the workman concerned. The representative of the management however in cross-examination tried to show that when these complaints purport to have been sent to the Labour Inspector, there should be orders of the Labour Inspector at the first instance and the copies of these letters do not bear any order of the Labour Inspector at the first instance and, therefore, these letters are not reliable, but I do not find any force in this contention, the letters given by hand in the office of the Labour Inspector may be put before the Labour Inspector by the staff concerned and this has been so explained by the said witness. The management has sent the letter to the workman at the following address.

"5/137, N.I.T., Faridabad."

Although in the said *pro forma* this number is described as local address but permanent address of the workman is described as 5A/137, N.I.T., Faridabad. When the letters sent to the workman were received undelivered. The management did not make any effort to send those letters or other letters at the permanent address of the workman. This shows that the management avoided the delivery of those letters to the workman at his permanent correct address. Otherwise what is the necessity of taking the permanent address of the workman in this *pro forma* and this *pro forma* even has been relied on by the management. The workman concerned examined himself as W.W. 2 who stated on oath that he never absented from duty and it was the management who terminated the services. He further stated that he was confined in a room till 5 P.M. and was not allowed to resume duty on 5th April, 1973. The management also proved some proceedings before the Conciliation Officer *vide* Exhibit M-8. The Conciliation Officer found that the name of the workman existed on the muster roll and he requested the Labour Commissioner (Haryana), Chandigarh that the workman be ordered to resume his duty. The only question in this case which requires decision is whether the workman abandoned the services of his own or it was the management who terminated his services,—*vide* Exhibit M-9 wherein the statement of the management has been recorded by Conciliation Officer, I find that the management was not read to take the workman back on duty. This shows that the workman did not abandon his services of his own. Had it been so, there was no reason why the management did not like to take him back on duty. The workman then and there on 5th April, 1973 wrote a letter to the Labour Inspector that he was not allowed entry in the factory by the Security Officer of the management. The workman concerned also reported to the Labour Inspector regarding his manhandling and stopping from duty by the management,—*vide* Exhibit W-3. Not only this the workman concerned even gave a report to the Station House Officer Faridabad regarding his manhandling by the management,—*vide* Exhibit W-4 which is also dated 5th April, 1973. The management wrote a letter on 27th April, 1973 to the workman concerned C/o Shri J.P. Jain, 1-A/99, N.I.T., Faridabad asking the workman concerned to give them his full address. Beneath this letter a copy has been given to Shri Ujagar Singh at the address 5/137, N.I.T., Faridabad. In ink letter "A" is written. The workman concerned has sent a letter on 3rd May, 1973 by registered A.D. and in reply to the letter of the management, dated 27th April, 1973, to instruct the Security Officer to allow him to enter in the factory. This letter of the workman stood unreplyed to. This is not understood as to why the management did not reply this letter of the workman concerned when they were prepared to take him back on duty and the workman had requested to instruct the Security Officer to allow him entry in the factory premises. Although the management on 31st May, 1973 and 10th May, 1973 wrote to the Conciliation Officer—*vide* their letters, copies whereof Exhibit M-10 and M-11, that they were prepared to take the workman concerned on duty but they never informed of this intention of theirs to the workman concerned. This leads to the conclusion that the management did not want the workman to be taken back on duty and they were preparing the case before the Conciliation Officer and other authorities for showing that the workman concerned himself abandoned the service of the management. It further leads to the conclusion that the workman concerned did not abandon the services of the management of his own. The workman concerned is President of Frick India Employees Union, Faridabad. When it is concluded that the workman concerned did not abandon his services of his own, the only resulting conclusion is that his services were terminated by the management. Although the management tried to show that they did not terminate the services of the workman but their act of not allowing him entry in the factory premises has resulted in termination of services by the management. The management's assertion that the workman abandoned the services of his own and they did not terminate the services of the workman concerned is not proved. In the circumstances I hold that the management terminated the services of the workman and that the workman did not abandon his services of his own.

The learned representative of the management then argued that the management made all possible efforts to inform the workman that he should report back for duty and the management had proved several letters on this point although the copies of these letters are on the file but it can not be concluded on that basis that the workman abandoned the service of his own. The said representative of the management also argued that management was not at all fault when they addressed these letters to the workman concerned at the address given by them,—viz., 5/137 Faridabad Town. Further he argued that against permanent address the letter 'A' has been added at a place where it creates a doubt that it has been added afterwards because it is not in sequence of the writing. Proper space is not there between the figures 5 and the letter 'A' is above the figure 5. Although the letter 'A' is not in sequence of the writing and the space is also not in sequence which should have been, if, the letter 'A' has been written in the same original sequence, but this application for appointment, Exhibit M-5 comes from the custody of the management. It is possible that after some time the idea would have struck to the workman that he forget to give the Sector as 5-A and has given his sector as 5 only. I think this argument also does not much help the management. Then the representative of the workman argued that the bonafide intention of the management can be inferred from the facts that they wrote to the Conciliation Officer that they were prepared to take the workman concerned on duty and it cannot be concluded that they did not want to take the workman back on duty from the simple reason that they could not inform the workman concerned of this intention of theirs when they addressed the letters at his local address. He further argued that if the management could not address these letters at No. 5-A/137 and addressed at No. 5/137, it is not justified to hold that the management had a mala fide intention of not taking the workman concerned back on duty. To me it looks that there is at least negligence on the part of the management to address these letters at his local address given by the workman concerned and not addressing at the permanent address given by the workman concerned. It may be reasonably argued that nowhere it is proved that the management terminated the services of the workman but on the other hand it also has not been proved on the file that the workman concerned abandoned his service of his own.

I have considered all the arguments advanced by both the representative at length. I have also well-considered and discussed all the pros and cons of their arguments. I have also gone through the pleadings carefully and have appreciated evidence of both the parties documentary as well as oral. I reached to this conclusion that the workman did not abandon his services of his own. If on the report of the workman concerned to the police officer did not bear any fruits, I am reluctant to hold and hence do not hold that the workman concerned abandoned the service of his own, as there is no sufficient proof to uphold this. All the material on the file of this case leads me to decision that the workman concerned did not abandon his service of his own. When the workman concerned did not abandon his service of his own, I can very safely hold that it was the management who terminated the services of the workman concerned. I, therefore, now give my findings issue-wise.

Issue No. 1

As discussed above, I find this issue against the management.

Issue No. 2—

I find this issue against the management.

As far as back wages are concerned, considering the letters of the management of requiring the workman concerned to join duty and their letters to the Conciliation Officer for this very purpose and considering the letter of the conciliation officer to the Labour Commissioner, Haryana, Chandigarh requesting the Labour Commissioner that the workman concerned be directed to join his duty and also considering the fact that the management sent several letters to the workman concerned at his local address but not at his permanent address, I am of the view that in these circumstances, it would not be justifiable to grant full back wages to the workman concerned. Even in this case the workman appeared on 10th April, 1974 he did not appear on 1st June, 1974. There after the workman appeared upto 11th September, 1974 but he also did not appear on 10th December, 1974, although the management also did not appear on that day but the workman also defaulted in his appearance. Then Shri Sagar Ram Gupta, representative of the workman appeared on 19th January, 1975 for the workman. But thereafter none appeared for the workman on 24th February, 1975. Thereafter even notice was issued to the workman. On 1st April, 1975 also the workman did not appear although the management also did not appear but on the part of the workman it was also a default in appearance. Then the case was fixed for filing replication, but on that day also neither party appeared including the workman. Then the case was fixed for the evidence of the management on 15th December, 1975. The management closed their case on 15th December, 1975 and it was fixed for the evidence of the workman on 13th February, 1976. On 13th February, 1976 the representative of the workman prayed for adjournment. Then the workman closed his evidence on 14th May, 1976. This lead me to inter that there is some delay on the part of the workman concerned also in this case. In the circumstances of the case it would be justifiable if the workman is awarded half back wages. I therefore, give my award as follows :—

“That the workman concerned is entitled to reinstatement with continuity of service but with half back wages.”

Dated the 4th/5th May, 1977.

NATHU RAM SHARMA,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.